IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 342 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SHALIM ALIAS SALIM SUBHAN SHAIKH

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Appearance:

1. Criminal Revision Application No. 342 of 2000

MR SS PATEL Ld. APP for Petitioner No. 1

MR FB BRAHMBHATT for Respondent No. 1-2

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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 07/05/2002

ORAL JUDGEMENT

This revision application is preferred by the State of Gujarat in connection with the offence registered with the Gandhidham Police Station vide CR No.I-321 of 1999. It is the say of the State that on 24.9.1999, two prosecution witnesses namely Anjaliben and

Mayaben coming from Lilasha Nagar of town Gandhidham at about 7.30p.m.. At that time, one of the accused was following these two ladies and tried to snatch a gold chain from the neck of PW-Anjaliben and she tried to resist this snatching. The accused fire a round from country made pistol popularly known as "Tamancha" and Anjaliben sustained grievous hurt on her shoulder and ultimately died. The accused was chased by the public and ultimately one Traffic Constable has caught the accused with muddamal pistol. The applicant accused, while praying for discharge has submitted that they are not connecting in any manner with the offence committed by the accused they are bonafide tenant of one house no. 147 situated in Maheshwari Nagar. According to the petitioner, the accused had came to them and taken shelter and had only arranged for the residence and other things and they are wrongly charge-sheeted with the main accused for the serious offence including the offence punishable under sec. 212 of IPC. Mr. Bhrambhatt has submitted that in view of the ratio of the decision of Orissa High Court reported in 1992 Cri.L.J., p. 1863 clearly helps the accused because the basic ingredients of the offence punishable under sec. 212 of IPC has not been satisfied from the papers of investigation. The essential ingredients of the offence punishable under sec. 212, if mentioned would relevant and such ingredients are as follows:

1) Offence was committed by person who was harboured.

2) Such offence was punishable with death or imprisonment for life or for imprisonment extending to ten years, and when offence is under special or local law the punishment may extend to one year.

3) Accused harboured or concealed the offender, despite knowing or having reason to believe that he had committed the offence.

4) Accused thereby intended to screen the offender.

According to Mr. Brahmbhatt, the accused himself was apprehended immediately after the incident. There is scope to harbour or conceal him whether the present petitioner was not at all and the accused could not have been charge-sheeted by the police.

The say of Mr. SS Patel learned APP is that the

police tried to join the present accused in very offence as at relevant point of time, the accused was residing with the present petitioner and they were sharing one room. The panchnama of the room indicates that incriminating things were there in the room and therefore, the accused must be aware about the activities of the persons to whom they have given shelter. The inter-se relation between the accused and the present petitioner is not found nor it is pleaded specifically in the discharge application.

After the first offence committed by the offender which continued residing with the petitioner accused persons in the same house.

Till date, the trial court has not framed the charge. It is pertinent to note that though the police has not formally charge-sheeted the petitioner-accused because of the offence punishable under sec. 216-A of IPC. Section 216-A of IPC deals with the penalty for robberies and decoity and any person in question who was about to commit dacoity or robbery or committed recently and the accused if has knowledge of this, and the accused has harboured them or some of them, than such a person who is responsible in facilitating for commission of the offence or screening them is also an offence and can be convicted. While framing of the charge, the concerned court can frame the charge for those offence as alternative charge and can try the accused on merits. The sessions court has tried to appreciate the evidence in details and the order seems to be not a formal order discharging the accused but the same has been transcribed as if the ld. Sessions Judge was passing a final order of acquittal. This is a case where the accused would have been asked to undergo a fair trial, on the contrary, the status of the respondent-accused who had applied for discharge, the Investigating Agency could have separated the charge-sheeted them for the offence punishable under sec. 212 and/or under sec. 216-A of IPC.

The decision of the Orissa High Court in view of the above set of facts would not help at the initial stage of trial. Even the cited decision is also deals with a case tried by the concerned Sessions Court on merits and not of initial stage of proceedings.

For short, there is substance in the revision application and the same is allowed. The order allowing the discharge application filed by the respondent-accused is quashed and set aside. The accused are directed to face the fair trial. Rule is made absolute.

(C.K. BUCH, J.)
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